

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-755
)	
Steven D. Semon, Jackie L. Semon)	NAL/Acct. No. 200332560004
dba Sedalia Smiles, Owner of Antenna Structure)	
#1010169)	FRN 0005-8717-93
near Everton, Missouri)	
Sedalia, Missouri)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 5, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Steven D. Semon and Jackie L. Semon dba Sedalia Smiles ("Sedalia Smiles"), owner of antenna structure #1010169 near Everton, Missouri, willfully and repeatedly violated Section 17.51(b) of the Commission's Rules ("Rules")¹ by failing to exhibit lighting. We conclude that Sedalia Smiles is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On September 17, 2002, the Commission's Kansas City Field Office ("Kansas City Office") received information of a citizen's report regarding antenna structure #1010169 that had been completely dark for an extended period of time. The citizen reported that the structure's lights were observed out for at least a week and, using information posted at the structure, he had placed a call on September 10, 2002, to the posted number advising of the light outage with no results. The citizen provided a copy of his telephone bill showing a call made on September 10, 2002, to the contact number for the structure. The Commission's Antenna Structure Registration ("ASR") database showed the reported structure number 1010169 is owned by Sedalia Smiles. The FCC Enforcement Bureau's Communications and Crisis Management Center ("CCMC") placed a call to the contact number in the ASR database. Mr. Jerry Visentin, of Sedalia Smiles, stated that the lighting outage would be reported to the structure owner who was currently out of town and that tower lighting repair parts had been received for the structure. Mr. Visentin called back to the CMCC a short time later to obtain the Federal Aviation Administration ("FAA") phone number that would allow reporting of the lighting malfunction.

3. On September 18, 2002, an agent from the Kansas City Office interviewed Mr. Visentin of Sedalia Smiles by telephone. Mr. Visentin stated that Sedalia Smiles had not contacted the FAA until they were notified of the light outage by the FCC on September, 17, 2002. Also on September 18, 2002,

¹ 47 C.F.R. § 17.51(b).

the agent interviewed by telephone Mr. Steven Semon of Sedalia Smiles. Mr. Semon stated that the structure's lighting was supposed to be checked visually by a person living close to the tower, that Sedalia Smiles was informed by the citizen of the light outage on September 10, 2002, but that no report had been made to the FAA until contacted by the FCC on September 17, 2002.

III. DISCUSSION

7. Section 17.51(b) of the Rules requires all high intensity and medium intensity obstruction lighting be exhibited continuously unless otherwise specified. FAA specifications and the FCC ASR for this structure require lighting. Sedalia Smiles failed to exhibit the required obstruction lighting from at least September 10, 2002 to September 17, 2002. In addition, Sedalia Smiles failed to immediately notify the FAA of the light outage after being informed of the outage on September 10, 2002.²

8. Based on the evidence before us, we find Sedalia Smiles willfully³ and repeatedly⁴ violated Section 17.51(b) of the Rules by failing to exhibit required obstruction lighting from at least September 10, 2002, until September 17, 2002.

9. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for failure to exhibit obstruction lighting is \$10,000.⁵ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, ("Act"),⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

² Owners of registered antenna structures must immediately notify the FAA of any known improper functioning of any top or flashing light. See 47 C.F.R. § 17.48(a).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Sedalia Smiles is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(b) of the Rules by failing to exhibit the required antenna structure lighting.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Sedalia Smiles SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Steven D. Semon and Jackie L. Semon dba Sedalia Smiles, 720 W. Fifth St., Sedalia, MO. 65301.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director
Kansas City Office
Enforcement Bureau

Attachment